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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII**

**In The Matter Of the Application Of  
HAWAIIAN ELECTRIC COMPANY, INC.  
  
for approval to commit funds in excess of  
\$500,000 for Item Y48500, East Oahu  
Transmission Project.**

**DOCKET NO. 03-0417**

PUBLIC UTILITIES  
COMMISSION

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FILED

**MEMORANDUM IN RESPONSE TO  
MOTION TO INTERVENE BY DARLENE NAKAYAMA  
ON BEHALF OF HO 'OLAULIMA O PALOLO**

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**MEMORANDUM IN RESPONSE TO**  
**MOTION TO INTERVENE BY DARLENE NAKAYAMA**  
**ON BEHALF OF HO 'OLAULIMA O PALOLO**

This Memorandum is respectfully submitted by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") in response to the Motion to Intervene filed January 7, 2004 by Darlene Nakayama on behalf of Ho 'Olaulima O Palolo ("HOP") ("HOP's Motion").

The motion indicates that HOP is an "unincorporated community group of Palolo residents", which "was formed to fight this proposal by HECO." Unfortunately, the motion does not provide any organizational document (and none is on file with the State since the organization is not a corporation or another form of legal entity that files information with the State), or any indication as to who is "authorized" to represent the organization. Without such information, HECO's understanding is that the motion may have to be treated as the motion of the individual signing the motion.<sup>1</sup>

HECO accepts that that HOP is a bona fide organization, but it is difficult for HECO to respond to HOP's Motion, or to determine the extent to which its interests may be represented by

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<sup>1</sup> Hawaii Administrative Rules ("H.A.R.") provides that a "person" may make an application to intervene and become a party. In relevant part, H.A.R. Section 6-61-2 defines person to include both individuals and "organized groups of persons".

other parties to the proceeding, without additional information. For example, HOP contends that other parties do not represent HOP's interests, since the only parties are HECO and the Consumer Advocate, and HOP represents residents of Palolo. However, several other entities have filed motions to intervene in opposition to the application, including Palolo Community Council ("Palolo CC"), which is comprised of members from organizations in Palolo Valley. Palolo CC contends that it represents the interests of "Palolo property owners and renters", and "concerned residents of Palolo." (HECO has not objected and will not object to Palolo CC's motion to intervene.)

HECO is also concerned that the participation of numerous parties representing the same interests in a proceeding (particularly where some of the parties are participating on a pro se basis) could delay the proceeding (through repetitious questioning of witnesses, etc.), without contributing to the development of the record. The question of who will represent the organized group of individuals (if HOP is allowed to be a party or a participant) also needs to be established, so that it is clear that it is the organized group, speaking through its authorized representative, that is a party, and not all of the individuals who may claim to be members of the organization.

Therefore, HECO will not oppose HOP's Motion, provided that HOP (1) provides information to the Commission as to how its interests may differ from those of Palolo CC (assuming Palolo CC is made a party), (2) agrees that the person submitting the motion will be HOP's designated representative, or designates another representative, and (3) is not permitted to expand the scope of the proceeding or delay the proceeding and is required to comply with the Rules of Practice and Procedure Before the Public Utilities Commission (H.A.R., Title 6, Chapter 61) ("Commission's Rules of Practice and Procedure").

Alternatively, the Commission may allow HOP to participate, without intervening, in the proceeding through the Consumer Advocate or another party, such as Palolo CC (assuming Palolo CC is made a party), or to participate and represent itself in this proceeding, without intervening.

## **I. INTERVENTION**

In support of its “right” to participate, HOP states that “HOP may represent members who are or will be adjacent property owners of possible alternatives” to the project actually proposed, on the grounds that “HECO has the option of amending this Application to propose alternatives in Palolo.”<sup>2</sup> HOP also cites Docket No. 7256 (in which the Commission granted late-filed motions to intervene, and ultimately approved HECO’s Waiau-CIP 138kV #1 & #2, Part 2, Transmission Lines project<sup>3</sup>) as precedent. The Waiau-CIP case does not stand for the proposition that movants in HOP’s position are somehow entitled to the status of a party, and HOP has not cited any statute for that proposition. Compare Hawaii Revised Statutes §269-51 (granting the Consumer Advocate the right to participate in Commission proceedings). Thus, HOP’s Motion is governed by the Commission’s Rules of Practice and Procedure regarding intervention.

The general rule with respect to intervention, as stated by the Hawaii Supreme Court, is that intervention as a party to a proceeding before the Commission “is not a matter of right but is a matter resting within the sound discretion of the Commission.” In re Hawaiian Electric Co., 56 Haw. 260, 262, 535 P.2d 1102 (1975); see Re Maui Electric Co., Docket No. 7000, Decision

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<sup>2</sup> HOP’s Motion, 1<sup>st</sup> page. HOP’s Motion does not contain page numbers. For ease of reference, HECO will refer to the first page following the cover sheet of HOP’s Motion as the “1<sup>st</sup> page” and the second page (which contains the signature page to the body of HOP’s Motion) as the “2<sup>nd</sup> page”.

<sup>3</sup> Re Hawaiian Electric Co., Docket No. 7256, Decision and Order No. 13201 (April 7, 1994).

and Order No. 11668 (June 5, 1992) at 8; Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) at 5-6.

The Commission exercises its discretion by determining whether or not a movant should be admitted as a party (or as a participant) in a proceeding. H.A.R. §6-61-55 (d) specifically states that: “Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.” Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993). In addition, the Commission needs to insure “the just, speedy and inexpensive determination of every proceeding,” which is the purpose of the Commission’s rules as stated in H.A.R. §6-61-1.

## **II. LIMITED PARTICIPATION WITHOUT INTERVENTION**

The Commission in the past has denied intervenor status, but granted participation status pursuant to H.A.R. §6-61-56, and allowed the limited participation of persons seeking intervention on specific issues, through other entities or through their own representation, when such persons’ interests may not be adequately represented by existing parties, or when such persons may have special knowledge or expertise.

In Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) (“Order No. 10399”), the Commission denied the amended application to intervene of Puna Community Council, Inc. (“Puna CC”) in a Hawaii Electric Light Company, Inc. (“HELCO”) rate case, but granted Puna CC participation status, subject to the conditions that (1) Puna CC’s participation would be “limited to the issue of the specific impact of HELCO’s proposed rate structure on the ratepayers of the Puna district who are in the lower income brackets”, and (2) “[Puna CC] shall participate in the proceedings and present relevant documents and materials and testimony of witnesses through the Consumer Advocate.” Order

No. 10399, pages 5-6. (Puna CC had sought to intervene on the basis that HELCO's proposal to increase its rates would seriously impact the ratepayers of the Puna district. Puna CC's only attempt to distinguish itself from the general public was the allegation that HELCO's proposed rate increase would seriously impact Puna rate payers because most of them were in the lower income brackets and tend to use less power. Puna CC also argued that the Consumer Advocate would not adequately represent the interests of the Puna district ratepayers.)

In Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) ("D&O 11668"), the Commission denied intervention, but allowed limited participation to seven low-income residents through its attorneys, the Legal Aid Society of Hawaii (collectively "Legal Aid"), in a Maui Electric Company, Limited ("MECO") rate case. The low-income residents, through Legal Aid, sought to intervene on the alleged basis that they would not be adequately represented by the Consumer Advocate. D&O 11668, page 3. In addition, Legal Aid informed the Commission that it could further the development of the record as it had access to certain experts and resources not available to any other party.) The Consumer Advocate supported Legal Aid's involvement in the proceeding.

The Commission denied Legal Aid's Motion to Intervene, and found that the Consumer Advocate would protect Legal Aid's interest. However, the Commission was impressed by Legal Aid's statement of expertise, knowledge and experience, and thus granted Legal Aid participation status limited to the issue of the specific impact of MECO's proposed rate structure and rate design on ratepayers in the lower income brackets.

Based on its motion, HOP's stated interest in this proceeding relates to the impact of any alternative to the proposed project that would go through Palolo.

### **III. CONCLUSION**

Based on the foregoing, HECO will not oppose HOP's Motion, provided that HOP (1) provides information to the Commission as to how its interests may differ from those of Palolo CC (assuming Palolo CC is made a party), (2) agrees that the person submitting the motion will be HOP's designated representative, or designates another representative, and (3) is not permitted to expand the scope of the proceeding or delay the proceeding and is required to comply with the Commission's Rules of Practice and Procedure. Alternatively, the Commission may allow HOP to participate, without intervening, in the proceeding through the Consumer Advocate or another party, such as Palolo CC (assuming Palolo CC is made a party), or to participate and represent itself in this proceeding, without intervening.

DATED: Honolulu, Hawaii, January 14, 2004.



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THOMAS W. WILLIAMS, JR.  
PETER Y. KIKUTA

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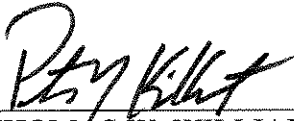
**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing **MEMORANDUM  
IN RESPONSE TO MOTION TO INTERVENE BY DARLENE NAKAYAMA ON  
BEHALF OF HO 'OLAULIMA O PALOLO**, together with this Certificate of Service, by  
making personal delivery or by causing a copy hereof to be mailed, postage prepaid and properly  
addressed, to each such party:

Division of Consumer Advocacy (2)  
Department of Commerce and Consumer Affairs  
335 Merchant Street, Room 326  
Honolulu, Hawaii 96813

Darlene Nakayama  
2396 Palolo Avenue  
Honolulu, Hawaii 96816

DATED: Honolulu, Hawaii January 14, 2004.

  
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HAWAIIAN ELECTRIC COMPANY, INC.